

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

JAMES D. JOHNSON, et al.

PLAINTIFF

VS

CIVIL ACTION NO. 3:04cv251LN

HALEY BARBOUR, et al.

DEFENDANT

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO AMEND ORDER
STAYING LITIGATION**

COME NOW, Defendants, by and through counsel and file this response to the Plaintiffs' Motion to Amend Order Staying Litigation. Contemporaneously filed with this Response is the Defendants' Motion to Extend Stay of Proceedings Due to the Impact of Hurricane Katrina.

Plaintiffs' Motion to Amend Order raises two issues, to which the Defendants respond as follows:

1. Plaintiffs submit that discovery motion practice should go forward on pre-Katrina disputes. Contrary to Plaintiffs' assertion, those discovery disputes cannot be independently resolved by Defendants' counsel. Resolution will involve counsel and the work and assistance of MDHS employees regarding documents produced as well as justifications for the production of certain documents. As more fully discussed in Defendants' concurrent Motion to Extend Stay, every MDHS employee is needed in continuing recovery efforts.

The recovery from Hurricane Katrina must take priority, and as such, the Governors Office and MDHS must be allowed to totally dedicate themselves to the recovery effort, which includes completely restoring MDHS services by the end of this year.

2. Plaintiffs request that the Court take judicial notice of their case record review and preclude any challenges from the Defendants. Plaintiffs base this request on the argument that Plaintiffs may have to incur additional expense and disruption. At this time, the Defendants are not in a position to waive any objections. Further, it would be highly prejudicial if Defendants were deprived of legitimate objections to evidence because of the impact of Hurricane Katrina. It is understandable that the Plaintiffs are concerned about the time and expense resulting from the storm. However, that concern pales in comparison to the impact that the Defendants and MDHS have suffered. To argue that the Defendants should be denied objections to evidence presented by the Plaintiffs is misplaced.

CONCLUSION

Notwithstanding the importance of this lawsuit, the Defendants respectfully request that this Court recognize the significant impact of Hurricane Katrina and allow the Defendants to focus on the recovery efforts for the remainder of this year without the additional burdens imposed by this lawsuit.

THIS, the 17th day of October, 2005.

Respectfully submitted,

HALEY BARBOUR, as Governor of the State of Mississippi; DONALD TAYLOR, as Executive Director of the Department of Human Services; and BILLY MANGOLD as Director of the Division of Family and Children's Services

BY: /s/ Dewitt L. (Rusty) Fortenberry, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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I also certify that I have this day served a copy of the foregoing on the following non-ECF participants by United States Mail, postage prepaid:

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SO CERTIFIED, this the **17th** day of **October, 2005**.

/s/ Dewitt L. (Rusty) Fortenberry, Jr.